



CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1461

[Docket No. CPSC-2022-0017]

Portable Fuel Container Safety Act Regulation

AGENCY: Consumer Product Safety Commission.

ACTION: Direct final rule.

SUMMARY: The Portable Fuel Container Safety Act of 2020 (PFCSA) provides that the Consumer Product Safety Commission (Commission) must promulgate a rule to require flame mitigation devices in portable fuel containers that impede the propagation of flame into the container, unless the Commission determines that there is a voluntary standard for flame mitigation devices that achieves the same result. In January 2023, the Commission published in the *Federal Register* a notice of its determinations under the PFCSA that three such voluntary standards collectively apply to all known classes of portable fuel containers. Pursuant to the PFCSA, therefore, the requirements of the three voluntary standards are treated as a consumer product safety rule under the Consumer Product Safety Act (CPSA). ASTM then notified the Commission that one standard had been revised. The Commission evaluated the revised standard and found that the revisions carry out the purposes of the PFCSA. Accordingly the revisions will be incorporated into the mandatory standard for portable fuel containers. This direct final rule creates a new part codifying the incorporation by reference of this revised standard and the other two voluntary standards that are mandatory under the PFCSA.

DATES: The rule is effective on December 9, 2023, unless CPSC receives a significant adverse comment by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If CPSC receives such a comment, it will publish in the *Federal Register* a notice withdrawing this direct final rule before its effective date. The incorporation by

reference of the publication listed in this rule is approved by the Director of the Federal Register as of December 9, 2023.

ADDRESSES: You can submit comments, identified by Docket No. CPSC-2022-0017, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: www.regulations.gov. Follow the instructions for submitting comments. Do not submit through this website: confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. CPSC typically does not accept comments submitted by electronic mail (e-mail), except as described below.

Mail/hand delivery/courier/confidential written submissions: CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal. You may, however, submit comments by mail, hand delivery, or courier to: Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504-7479.

Instructions: All submissions must include the agency name and docket number. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided, to: www.regulations.gov. If you wish to submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public, you may submit such comments by mail, hand delivery, or courier, or you may e-mail them to: cpsc-os@cpsc.gov.

Docket: For access to the docket to read background documents or comments received, go to: www.regulations.gov, and insert the docket number, CPSC-2022-0017, into the “Search” box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Will Cusey, Small Business Ombudsman, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-7945 or (888) 531-9070; email: sbo@cpsc.gov.

SUPPLEMENTARY INFORMATION:

A. Background

The PFCSA¹ requires the Commission to promulgate, not later than 30 months after December 27, 2020, a final rule to require flame mitigation devices in portable fuel containers that impede the propagation of flame into the container. 15 U.S.C. 2056d(b)(1), (2). However, the Commission is not required to promulgate a final rule for a class of portable fuel containers within the scope of the PFCSA if the Commission determines at any time that:

- there is a voluntary standard for flame mitigation devices for those containers that impedes the propagation of flame into the container;
- the voluntary standard is or will be in effect not later than 18 months after the date of enactment of the PFCSA (*i.e.*, June 27, 2022); and
- the voluntary standard is developed by ASTM International or such other standard development organization that the Commission determines to have met the intent of the PFCSA.

15 U.S.C. 2056d(b)(3)(A). Any such Commission determinations regarding applicable voluntary standards must be published in the *Federal Register*. 15 U.S.C. 2056d(b)(3)(B).

On January 13, 2023, the Commission published favorable determinations under section 2056d(b)(3)(A) of the PFCSA regarding three voluntary standards for portable fuel containers: ASTM F3429/F3429M-20, ASTM F3326-21, and section 18 of ANSI/CAN/UL/ULC 30:2022 (UL 30:2022). 88 FR 2206. Therefore, by operation of the PFCSA, portable fuel containers manufactured after July 12, 2023, must comply with the requirements of either ASTM

¹ Portable Fuel Container Safety Act of 2020, codified at 15 U.S.C. § 2056d, as stated Pub. L. No. 116–260, div. FF, title IX, § 901, available at: www.govinfo.gov/content/pkg/PLAW-116publ260/pdf/PLAW-116publ260.pdf.

F3429/F3429M-20, ASTM F3326-21, or section 18 of UL 30:2022, as applicable. In particular, portable fuel containers sold empty (that are not safety cans²) are required to comply with the requirements of ASTM F3326-21. Safety cans are required to meet the requirements of either ASTM F3326-21 or section 18 of UL 30:2022. Portable fuel containers sold pre-filled are required to comply with the requirements of ASTM F3429/F3429M-20. However, in a May 19, 2023, letter, the CPSC Office of Compliance and Field Operations exercised enforcement discretion regarding pre-filled portable fuel containers subject to ASTM F3429/F3429M-20 to prevent a shortage of critical fuels, including fuels used for emergencies.³

Under section 2056d(b)(5) of the PFCSA, a voluntary standards organization must notify the Commission of any revision to the requirements for flame mitigation devices for the Commission-approved voluntary standards for portable fuel containers. Once a voluntary standards organization notifies the CPSC, the revisions will be incorporated into the consumer product safety rule not later than 180 days after notification (or such later date as the Commission determines appropriate), unless within 90 days of such notice, the Commission determines that the revisions do not meet the requirements of section 2056d(b)(3) of the PFCSA, and so notifies the voluntary standards organization. 15 U.S.C. 2056d(b)(5)(B).

On June 12, 2023, ASTM notified CPSC that it has revised ASTM F3429/F3429M-20 with the publication of ASTM F3429/F3429M-23. On June 23, 2023, the Commission published a notice of availability and request for comment regarding revised ASTM F3429/F3429M-23. Two comments were submitted in support of a favorable Commission determination on the revisions to ASTM F3429/F3429M. 88 FR 41046. On August 22, 2023, as set forth in section B of this preamble, the Commission determined that the revisions meet the requirements of section

² Safety cans are portable fuel containers sold empty that the U.S. Occupational Safety and Health Administration (OSHA) generally regulates for use in the workplace but are also available for purchase by consumers at many physical and online retailers.

³ The letter is available here: <https://www.cpsc.gov/s3fs-public/Enforcement-Discretion-Related-to-Portable-Fuel-Containers.pdf?VersionId=7ZC5ry.So7vVIpsL2J7329Pfshyh49a>.

2056d(b)(3)(A) of the PFCSA.⁴ Accordingly, ASTM F3429/F3429M-23 shall be treated as a consumer product safety rule promulgated under section 9 of the CPSA effective December 9, 2023 (which is 180 days after ASTM's notification). This direct final rule creates a new 16 CFR part 1461 for portable fuel containers to incorporate by reference the revised ASTM F3429/F3429M-23, as well as ASTM F3326-21 and section 18 of UL 30:2022.⁵ This direct final rule is codifying the three voluntary standards for portable fuel containers that are mandatory under the PFCSA for the convenience of stakeholders and the public and to provide clarity regarding which versions of the voluntary standards are mandatory for portable fuel containers under the PFCSA.

B. Revisions to ASTM F3429/F3429M

On January 13, 2023, the Commission published a *Federal Register* notice in accordance with the PFCSA, determining that pre-filled portable fuel containers must comply with ASTM F3429/F3429M-20 as a consumer product safety rule. 88 FR 2206. On June 12, 2023, ASTM notified the Commission that a revision of that standard, ASTM F3429/F3429M-23, was published in May 2023. ASTM F3429/F3429M-23 includes substantive revisions affecting the flame mitigation performance tests (the endurance test and the flashback test) and non-substantive revisions concerning its scope, a referenced document, a section title, and the appendix of the standard. The substantive revisions affecting the performance test requirements relate to testing containers with large volumes, testing containers with wide mouths, modifying the allowable downward angle of the container during testing, and eliminating redundant testing when the same flame mitigation device is used on differently sized containers.

As discussed below, the Commission concluded that the changes in ASTM F3429/F3429M-23 do not affect the effectiveness of the flame mitigation device in impeding the

⁴ See Record of Commission Action here: https://www.cpsc.gov/s3fs-public/RCAASTMsRevisedStandardforPrefilledContainersandDirectFinalRuleUnderthePortableFuelContainerSafetyActof2020.pdf?VersionId=2bvaQho_RlirJo.xyAFUZXyFS2.7Qw7R.

⁵ The Commission voted 4-0 to approve publication of this notice as drafted.

propagation of a flame or other ignition source into the container. The changes to the standard will improve the safety of testing flame mitigation devices on larger volume containers and facilitate compliance testing of these containers.

Many of the revisions to ASTM F3429/F3429M-20 were requested by laboratories conducting the testing for compliance, to improve safety for test personnel and facilities. Without these changes to the test methods, manufacturers may not be able to find a certification testing laboratory to demonstrate compliance for some of their products, which could limit consumer access to these products. If consumers are unable to buy pre-filled portable fuel containers that are compliant with ASTM F3429/F3429M, they may use hazardous substitute containers.

As explained below, the Commission concluded that the revisions in ASTM F3429/F3429M-23 meet the requirements of section 2056d(b)(3)(A) of the PFCSA is allowing ASTM F3429/F3429M-23 to become the mandatory consumer product safety rule for pre-filled portable fuel containers pursuant to section 2056d(b)(5) of the PFCSA. The background and revisions to ASTM F3429/F3429M are described in more detail in the CPSC staff's briefing memorandum.⁶

1. Substantive Revisions to ASTM F3429/F3429M

a. Larger volume containers

The first substantive revision in ASTM F3429/F3429M-23 allows the container volume to be reduced for testing purposes if the reduced volume does not impact, change, hinder, or deform the flame mitigation device or how the flame mitigation device is mounted on the container. Laboratories that tested containers with larger volumes to ASTM F3429/F3429M-20 found that a failed test produced a large explosion that presented a risk to test personnel and equipment. Testing laboratories determined that they could not safely mitigate the risks when

⁶ Staff Memorandum available at: https://www.cpsc.gov/s3fs-public/ASTMsRevisedStandardforPerfilledContainersandDirectFinalRuleUnderthePortableFuelContainerSafetyActof2020.pdf?VersionId=_p5lXY4B1YRCU_horxqDSMNF_Vcl0NB1.

testing larger volumes without a revision to ASTM F3429/F3429M-20. We note a flame mitigation device impedes the propagation of the flame into the container by quenching an external flame at the mouth of the container before it can ignite the vapors within the container. The shape and size of the container does not impact determination of the flame mitigation device's effectiveness because an effective device stops the flame before it enters the container. The changes proposed affect only the consequences of a failure, not whether the flame mitigation device fails. The Commission therefore concludes that this revision facilitates compliance testing but does not affect the voluntary standard's satisfaction of the requirements of section 2056d(b)(3)(A) of the PFCSA.

b. Containers with wider mouths

The second substantive revision to ASTM F3429/F3429M-23 limits the maximum flow rate of gaseous fuel and air used to fill the container before the tests. This change only alters the rate of filling the container to prepare it to be tested. Laboratories that tested containers with wider mouths to ASTM F3429/F3429M-20 found that the flow of gaseous fuel and air created a large cloud of explosive gas outside the container. Open flames near the cloud of explosive gas presented an explosion risk. Testing laboratories determined that they could not safely mitigate the risks to test personnel when testing containers with wider mouths without modifying ASTM F3429/F3429M-20.

Under the revision, gaseous fuel and air at the appropriate ratio fill the container before the trials, but the flow is stopped before the external flames are introduced. Because the gaseous fuel and air flow is stopped before the external ignition source is introduced, slowing the fill rate does not affect the performance of the flame mitigation device. The Commission concludes that this revision facilitates compliance testing but does not affect the voluntary standard's satisfying the requirements of section 2056d(b)(3)(A) of the PFCSA because the performance of the flame mitigation device when exposed to external ignition sources is evaluated the same as with a faster fill rate.

c. Downward angle when testing container

The third substantive revision to ASTM F3429/F3429M-23 allows the container to be mounted at a downward angle between 45 and 60 degrees when tested, rather than at 45 +/- 2 degrees as under the 2020 version of the standard. Testing laboratories proposed this change to allow greater flexibility to position the flame directly onto the mouth of the container as required in the test. Testing laboratories had found it difficult to properly position the flame as required in the performance test without being able to adjust the position of the container significantly. Because an effective flame mitigation device impedes the flame before it reaches inside the container, and an ineffective device allow the ignition of the gaseous fuel and air in the container regardless of the angle, the precise downward angle of the container is not critical to the effectiveness of the flame mitigation device.

d. Accepting flame mitigation devices on other containers

The fourth substantive revision to ASTM F3429/F3429M-23 allows a container that uses a flame mitigation device that has met the requirements of the standard when attached in the same manner to a similar container model, to be considered compliant with this standard, without needing to be re-tested. Because a compliant flame mitigation device prevents flame from reaching vapors in the container, changing the shape and size of the container does not affect the effectiveness of the flame mitigation device.

2. Non-Substantive Revisions to ASTM F3429/F3429M

There are three non-substantive revisions in ASTM F3429/F3429M-23. First, ASTM changed the order of the scope subclauses to match the standard structure of other ASTM specifications. The text of the scope was not otherwise changed. Second, ASTM F3326 was removed from the listed reference documents as it was not used elsewhere in ASTM F3429/F3429M-23. A reserved section was renamed from a “permanency” test to a “retention” test. Currently, this is a placeholder for a potential future requirement. Finally, some explanatory information in the non-mandatory appendix for the “retention” test was removed,

but no mandatory requirements were added or changed. The Commission concludes these non-substantive changes do not implicate the standard satisfying the requirements of section 2056d(b)(3)(A) of the PFCSA.

C. Description of the Rule

This direct final rule creates a new part 1461, “Portable Fuel Container Safety Act Regulation.” Part 1461 incorporates by reference the three voluntary standards the Commission has determined under the PFCSA to be mandatory: ASTM F3429/F3429M-23 (updated from the 2020 version of the standard), ASTM F3326-21, and section 18 of UL 30:2022. The provisions of the direct final rule are described below.

A. Section 1461.1 – Scope and application

Section 1461.1 of the rule provides, in accordance with the PFCSA, that portable fuel containers must comply with the requirements specified in § 1461.3, which are considered to be consumer product safety rules.

B. Section 1461.2 – Definition

Section 1461.2 of the rule provides the statutory definition of “portable fuel container” found in the PFCSA. Although this definition is provided in the PFCSA, this section restates the definition for the convenience of the regulated community and the public.

C. Section 1461.3 – Requirements for flame mitigation devices on portable fuel containers

Section 1461.3 provides that each portable fuel container manufactured for sale in the United States shall conform to the applicable requirements of this section depending on whether the portable fuel container is sold pre-filled or empty.

Section 1461.3(a)(1) of the rule requires that portable fuel containers sold to consumers pre-filled must comply with the requirements of ASTM F3429/F3429M-23, *Standard Specification for Performance of Flame Mitigation Devices Installed in Disposable and Pre-Filled Flammable Liquid Containers*. ASTM F3429/F3429M is listed by ASTM as a dual

standard in inch-pound (F3429 designation) and metric (F3429M designation) units. Both designations of the standard are substantively identical except for the inch-pound versus metric units used in the standard. The standard requires two performance tests of the container's flame mitigation device. The first is an endurance test, in which the container is subjected to an external and stationary 2.5-inch flame at the mouth of the container for 30 seconds. The second test is a flashback test, in which the container is subjected to an external flash fire near the container mouth. The container passes each test if the contents of the container do not catch fire or otherwise ignite in each of five consecutive trials. The two tests are used to demonstrate that the flame mitigation device impedes the propagation of two different types of ignition sources, a stationary flame and a moving flame.

Section 1461.3(a)(2) of the rule requires portable fuel containers sold empty to the consumer to comply with ASTM F3326-21, *Standard Specification for Flame Mitigation Devices on Portable Fuel Containers*. ASTM F3326 requires a performance test of the container's flame mitigation devices after the container is exposed to several use-and-abuse tests. Use-and-abuse tests are designed to ensure a flame mitigation device still functions after simulating normal use and reasonably foreseeable abuse of the container over time. The flame mitigation device performance test demonstrates that the container prevents a flame traveling at five meters per second from igniting the contents of the container in each of five consecutive trials. The test also demonstrates that the flame mitigation device impedes the propagation of a rapidly travelling flame front into the container.

Portable fuel containers sold empty to the consumer that are classified as safety cans that meet the requirements of section 18 of UL 30:2022, *Standard for Safety Metallic and Nonmetallic Safety Cans for Flammable and Combustible Liquids*, are not required to comply with ASTM F3326-21. UL 30:2022 is a voluntary standard that covers various requirements for safety cans, including requirements for flame mitigation devices. Section 18 of UL 30 has two performance test options. The first option is to subject the safety can mouth to an external and

stationary 2.5-inch flame for 30 seconds. The safety can passes the test if the interior contents of the safety can do not catch fire or otherwise ignite in each of five consecutive trials. The second performance test option is used for safety cans that have a flame arrestor. In this performance test, a 7.5-inch flame is balanced on one side of the flame arrestor as a fuel-air mixture passes through. The flame arrestor fails if the flame crosses the flame arrestor and ignites the fuel-air mixture.

Section 1461.4 of the rule incorporates by reference the three voluntary standards that are mandatory under the rule.

D. Direct Final Rule Process

The Commission is issuing this rule as a direct final rule. Although the Administrative Procedure Act (APA; 5 U.S.C. 551-559) generally requires agencies to provide notice of a rule and an opportunity for interested parties to comment on it, section 553 of the APA provides an exception when the agency “for good cause finds” that notice and comment are “impracticable, unnecessary, or contrary to the public interest.” *Id.* 553(b)(B).

The purpose of this direct final rule is to codify in the CFR three voluntary standards (ASTM F3429/F3429M-23, ASTM F3326-21, and section 18 of UL 30:2022) that are mandatory consumer product safety rules by operation of law under the PFCSA. Public comments would not alter whether the three voluntary standards are considered mandatory consumer product safety rules under the PFCSA. The Commission concludes that when it merely codifies voluntary standards that are already mandatory consumer product safety rules by statute under the PFCSA, notice and comment are unnecessary.

In its Recommendation 95-4, the Administrative Conference of the United States (ACUS) endorses direct final rulemaking as an appropriate procedure to expedite rules that are noncontroversial and not expected to generate significant adverse comments. *See* 60 FR 43108 (Aug. 18, 1995). ACUS recommends that agencies use the direct final rule process when they act under the “unnecessary” prong of the good cause exemption in 5 U.S.C. 553(b)(B).

Consistent with the ACUS recommendation, the Commission is publishing this rule as a direct final rule, because CPSC does not expect any significant adverse comments.

Unless CPSC receives a significant adverse comment by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], this rule will become effective on December 9, 2023—the end of the 180-day period specified in the PFCSA. In accordance with ACUS’s recommendation, the Commission considers a significant adverse comment to be “one where the commenter explains why the rule would be inappropriate,” including an assertion challenging “the rule’s underlying premise or approach,” or a claim that the rule “would be ineffective or unacceptable without a change.” 60 FR 43108, 43111 (Aug. 18, 1995). As noted, this rule merely codifies in the CFR the three voluntary standards that are mandatory consumer product safety rules under the PFCSA and restates the statutory definition of “portable fuel container”; thus, public comments would not change such statutory requirements or definitions.

If the Commission does receive a significant adverse comment, the Commission will withdraw this direct final rule. Depending on the comment and other circumstances, the Commission may then incorporate the adverse comment into a subsequent direct final rule or publish a notice of proposed rulemaking, providing an opportunity for public comment.

E. Incorporation by Reference

Section 1460.3 of the direct final rule incorporates by reference ASTM F3429/F3429M-23, ASTM F3326-21, and section 18 of ANSI/CAN/UL/ULC 30:2022. The Office of the Federal Register (OFR) has regulations regarding incorporation by reference. 1 CFR part 51. Under these regulations, agencies must discuss, in the preamble to a final rule, ways in which the material the agency incorporates by reference is reasonably available to interested parties, and how interested parties can obtain the material. In addition, the preamble to the final rule must summarize the material. 1 CFR 51.5(b).

In accordance with the OFR regulations, section C of this preamble summarizes the major provisions of ASTM F3429/F3429M-23, ASTM F3326-21, and section 18 of UL 30:2022 that the Commission incorporates by reference into 16 CFR part 1461. The standards are reasonably available to interested parties. Until the direct final rule takes effect, read-only copies of ASTM F3429/F3429M-23 and ASTM F3326-21 are available for viewing, at no cost, on ASTM's website at: www.astm.org/CPSC.htm. Once the rule takes effect, a read-only copy of those two ASTM standards will be available for viewing, at no cost, on the ASTM website at: www.astm.org/READINGLIBRARY/. Interested parties can purchase copies of ASTM F3429/F3429M-23 and ASTM F3326-21 from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959 USA; telephone: (610) 832-9585; www.astm.org.

A read-only copy of UL 30:2022 is available for viewing, free-of-charge at UL's Standards Sale Site at: shopulstandards.com. Click "Browse and Buy Standards," and search for UL 30 and then click "Digital View," and sign in, or create a user account. The read-only copy of UL 30:2022 will remain available for viewing, free-of-charge after the direct final rule goes into effect. Interested parties can purchase a copy of UL 30:2022 from UL Standards and Engagement, 151 Eastern Avenue Bensenville, IL 60106 USA; telephone: (888) 853-3503; shopulstandards.com.

Interested parties can also schedule an appointment to inspect copies of ASTM F3429/F3429M-23, ASTM F3326-21, and UL 30:2022 at CPSC's Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone: (301) 504-7479; e-mail: cpsc-os@cpsc.gov.

F. Effective Date

Section 2056d(b)(5)(B) of the PFCSA provides that not later than 180 days after the Commission is notified of a revised voluntary standard (or such later date as the Commission

determines appropriate), such revised voluntary standard shall become enforceable as a consumer product safety rule promulgated under 16 U.S.C. 2058, in place of the prior version, unless within 90 days after receiving the notice the Commission determines that the revised voluntary standard does not meet the requirements in section 2056d(b)(3)(A) of the PFCSA. Unless the Commission receives a significant adverse comment by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], the rule therefore will become effective on December 9, 2023. Based on the Commission's January 2023 published determinations under the PFCSA, portable fuel containers that are sold empty to the consumer manufactured after July 12, 2023, must comply with the requirements of either ASTM F3326-21, or section 18 of UL 30:2022, as applicable. This direct final rule's effective date of December 9, 2023, which is the effective date of the ASTM F3429/F3429M-23 revision as a mandatory safety standard, does not alter the previously established effective date of July 12, 2023, for ASTM F3326-21 and section 18 of UL 30:2022 under the PFCSA. Products subject to the requirements of those standards are already required to meet those standards.

Further, portable fuel containers sold pre-filled are also required under the PFCSA to comply with the requirements of ASTM F3429/F3429M-20 after July 12, 2023. However, on May 19, 2023, the Office of Compliance and Field Operations issued a letter exercising enforcement discretion regarding pre-filled portable fuel containers subject to ASTM F3429/F3429M-20 to prevent a shortage of critical fuels used for emergencies.

G. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA; 5 U.S.C. 601-612) generally requires agencies to review proposed and final rules for their potential economic impact on small entities, including small businesses, and prepare regulatory flexibility analyses. 5 U.S.C. 603, 604. The RFA applies to any rule that is subject to notice and comment procedures under section 553 of the APA. *Id.* As discussed in section D of this preamble, the Commission has determined that notice and the opportunity to comment are unnecessary for this rule. Therefore, the RFA does

not apply. CPSC also notes the limited nature of this document, which merely creates a new part in the Code of Federal Regulations codifying the incorporations by reference to reflect the voluntary standards that are mandatory under the PFCSA and the statutory definition of portable fuel containers.

H. Environmental Considerations

The Commission's regulations provide a categorical exclusion for the Commission's rules from any requirement to prepare an environmental assessment or an environmental impact statement where they "have little or no potential for affecting the human environment." 16 CFR 1021.5(c)(2). This rule falls within the categorical exclusion, so no environmental assessment or environmental impact statement is required.

I. Preemption

Section 26(a) of the CPSA provides that where a consumer product safety standard is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a requirement dealing with the same risk of injury unless the state requirement is identical to the federal standard. 15 U.S.C. 2075(a). Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to CPSC for an exemption from this preemption under certain circumstances. The PFCSA deems rules issued under that statute to be a "consumer product safety rule." Therefore, once a rule issued under the PFCSA takes effect, it will preempt in accordance with section 26(a) of the CPSA.

J. Congressional Review Act

The Congressional Review Act (CRA; 5 U.S.C. 801-808) states that before a rule can take effect, the agency issuing the rule must submit the rule, and certain related information, to each House of Congress and the Comptroller General. 5 U.S.C. 801(a)(1). The CRA submission

must indicate whether the rule is a “major rule.” The CRA states that the Office of Information and Regulatory Affairs determines whether a rule qualifies as a “major rule.”

Pursuant to the CRA, OIRA has determined that the rule does not qualify as a “major rule,” as defined in 5 U.S.C. 804(2). To comply with the CRA, CPSC will submit the required information to each House of Congress and the Comptroller General.

List of Subjects in 16 CFR Part 1461

Consumer protection, Portable Fuel Containers, Incorporation by reference, Safety.

For the reasons discussed in the preamble, the Commission amends 16 CFR chapter II by adding part 1461 to subchapter B to read as follows:

PART 1461 – PORTABLE FUEL CONTAINER SAFETY ACT REGULATION

Sec.

1461.1 Scope and application.

1461.2 Definition.

1461.3 Requirements for flame mitigation devices on portable fuel containers.

1461.4 Incorporation by reference.

Authority: 15 U.S.C. 2056d.

§ 1461.1 Scope and application.

In accordance with the Portable Fuel Container Safety Act of 2020 (PFCSA), portable fuel containers must comply with the requirements specified in § 1461.3, which are considered to be consumer product safety rules.

§ 1461.2 Definition.

The definition of portable fuel container in the PFCSA (5 U.S.C. 2056d(b)(8)) applies to this part. Specifically, a portable fuel container is defined in the PFCSA as any container or vessel (including any spout, cap, and other closure mechanism or component of such container or vessel or any retrofit or aftermarket spout or component intended or reasonably anticipated to be for use with such container)—

(a)(1) Intended for flammable liquid fuels with a flash point less than 140 degrees Fahrenheit, including gasoline, kerosene, diesel, ethanol, methanol, denatured alcohol, or

biofuels;

(2) That is a consumer product with a capacity of 5 gallons or less; and

(3) That the manufacturer knows or reasonably should know is used by consumers

for transporting, storing, and dispensing flammable liquid fuels.

(b) [Reserved]

§ 1461.3 Requirements for flame mitigation devices on portable fuel containers.

Each portable fuel container manufactured for sale in the United States shall conform to one of the following applicable requirements.

(a) *Containers sold pre-filled.* Portable fuel containers sold pre-filled with a flammable liquid to the consumer must comply with the requirements of ASTM F3429/F3429M-23 (incorporated by reference, see § 1461.4).

(b) *Containers sold empty.* Portable fuel containers sold empty to the consumer must meet the requirements of ASTM F3326-21 (incorporated by reference, see § 1461.4). Portable fuel containers sold empty to the consumer that are classified as safety cans that meet the requirements of section 18 of ANSI/CAN/UL/ULC 30:2022 (incorporated by reference, see § 1461.4) are not required to comply with ASTM F3326-21.

§ 1461.4 Incorporation by reference.

Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference material is available for inspection at the Consumer Product Safety Commission and at the National Archives and Records Administration (NARA). Contact the U.S. Consumer Product Safety Commission at: Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-7479, email cpsc-os@cpsc.gov. For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations or email fr.inspection@nara.gov. The material may be obtained from the following sources:

(a) ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428-2959; phone: (610) 832-9585; website: www.astm.org.

(1) ASTM F3326-21, *Standard Specification for Flame Mitigation Devices on Portable Fuel Containers*, approved on September 1, 2021.

(2) ASTM F3429/F3429M-23, *Standard Specification for Performance of Flame Mitigation Devices Installed in Disposable and Pre-Filled Flammable Liquid Containers*, approved on May 1, 2023.

(b) UL Standards and Engagement, International, 151 Eastern Avenue, Bensenville, IL 60106; phone: 1-888-853-3503; website: www.shopulstandards.com.

(1) ANSI/CAN/UL/ULC 30:2022, *Standard for Safety: Metallic and Nonmetallic Safety Cans for Flammable and Combustible Liquids*, Tenth Edition, dated April 29, 2022.

(2) [Reserved]

Alberta E. Mills, Secretary
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